WESTERN NEWS
Libby MT 59923
Wednesday & Friday
MAY -4 2004
Superior Clipping Service
Glendive MT 406-377-6612

Grace files appeal of judgment

W.R. Grace has appealed the largest judgment in the history of the federal Superfund law, arguing that the Libby asbestos cleanup was not an emergency requiring a no-holds-barred response by the Environmental Protection Agency.

In an appeal filed last week, Grace attorneys hold that a federal court in Missoula erred when it granted summary judgment approving the EPA's classification of its initial response to Libby as an emergency removal action rather than a remedial action. Under Superfund law, a removal action is a short-term response to an immediate threat to public health and safety while a remedial action is a permanent, long-term solution where no immediate threat exists.

Grace argues that Libby presented a clear case for a remedial action rather than a removal action, but political pressures sparked by a series of articles that ran in a Seattle newspaper in late 1999 led the EPA to respond without regard to cost or cost-effectiveness.

> "There is no evidence of any post-1990 exposure to asbestos resulting in illness."
>
> **Brief filed by W.R. Grace**

"This case represents a textbook example of an administrative agency run amok," Grace's attorneys wrote in a brief filed April 26 with a federal appeals court in San Francisco.

By classifying the Libby cleanup as an emergency, the agency unnecessarily circumvented a $2 million, 12-month statutory cap on removal actions, Grace holds. Last August, the judge in Missoula awarded the EPA every penny it asked for – more than $54 million incurred through the end of 2001 – and issued a declaration holding Grace responsible for future cleanup costs.

Grace does not deny in its appeal that workplace conditions at the Libby vermiculite mine and mill from the 1930s until the installation of a "wet mill" in 1974 were dangerous and resulted in asbestos-related diseases.

"Indeed, this has been clear for over a generation," the company's lawyers wrote. "The first workers-compensation claims arising from asbestos exposure at the mill were filed in the late 1960s, and the first lawsuits based on such exposure were filed in the mid 1980s."

The company does dispute that

See **Grace brief** on Page 9

Grace brief

Continued from Page 1

asbestos-contaminated vermiculite left behind from 60 years of mining operations was a problem that justified an emergency response in 1999.

"Not surprising, after the mine shut down in 1990, the potential for any substantial or chronic asbestos exposure declined significantly," the company holds. "Indeed, there is no evidence of any post-1990 exposure to asbestos resulting in illness."

"The only thing that happened in late 1999 to trigger an 'emergency,' thus, was the Seattle Post-Intelligencer's series about Libby," the brief continues. "But the emergency triggered thereby was political, not environmental, in nature."

Grace refers to statements from EPA officials to support its claim that no immediate health emergency existed in Libby and that merely living in Libby and breathing the outdoor ambient air did not pose a risk.

"Having consistently reassured the community that no 'emergency' was afoot while arguing in court that it could recover unlimited 'emergency' costs from Grace, EPA is now caught in a web of its own contradictions," the company contends.

Libby was listed on the EPA's National Priorities list – allowing the cleanup to transition from a removal action to a remedial action – in October 2002.

In addition to its arguments surrounding the nature of EPA's response to Libby, Grace also takes issue with the methods the agency used to allocate indirect "overhead" costs related to the Libby cleanup but incurred by other federal agencies, primarily the Volpe Center. The methods used resulted in an over-allocation of indirect costs to Libby and an under-allocation to other sites adding up to about $10 million, Grace contends.